

Jeffery L. Caufield (SBN 166524)
jeff@caufieldjames.com
Kenneth E. James (SBN 173775)
ken@caufieldjames.com
CAUFIELD & JAMES, LLP
2851 Camino Del Rio South, Suite 250
San Diego, California 92108
Telephone: 619-325-0441
Facsimile : 619-325-0231

Attorneys for Plaintiffs, Greve Financial Services, Inc., Angeles Chemical Company, Inc., and John Locke

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANGELES CHEMICAL COMPANY, INC.
et al.

Northern District Miscellaneous Matter
Case No. C 06-80343 Misc MMC (EDL)
Case No. C 07-80123 Misc MMC (EDL)

Plaintiffs,

Case No: 01-10532 TJH (Ex)
Central District of California

MCKESSON CORPORATION, a California Corporation, MCKESSON CHEMICAL COMPANY, FOREMOST-MCKESSON EXPORT CORPORATION, MORELAND-MCKESSON CHEMICAL COMPANY INC. and DOES 1 through 500, Inclusive.

PLAINTIFF ANGELES CHEMICAL
COMPANY'S EVIDENTIARY
OBJECTIONS TO SQUIRE SANDERS &
DEMPSEY L.L.P.'S OPPOSITION TO
MOTION TO COMPEL COMPLIANCE
WITH THE MARCH 22, 2007 COURT
ORDER

Defendants

Date: June 6, 2007
Time: 9:00 a.m.
Room: Courtroom E, 15th Floor
450 Golden Gate Ave
San Francisco, CA
Judge: Hon. Elizabeth D. Laporte

Plaintiffs Angeles Chemical Company, Greve Financial Services and John Locke (“Plaintiffs”) hereby object to the Declarations of Maureen Bennett, Nicholas Unkovic and Diane Gibson, and the Attached Exhibits filed in Support of Squire Sanders, & Dempsey’s (“SSD”) Opposition to Angeles’ Motion to Compel Compliance with the March 22, 2007 Court Order (“Order”), Case No. 07-80123 Docket No. 3, as follows:

Plaintiff Angeles' Evidentiary Objections to SSD's Opposition

Northern District Misc Matter
Case No. C 06-80343 Misc MMC (EDL)
Case No. C 07-80123 Misc MMC (EDL)

1. Declaration of Diane Gibson2. a. Lacks Personal Knowledge

Inadmissible hearsay cannot substitute for personal knowledge, neither can statements made on information and belief. See Washington Cent. R. Co., Inc. v. National Mediation Bd., 830 F. Supp. 1343, 1352-53 (E.D. Wash. 1993); Sellers v. M.C. Floor Crafters, Inc., 842 F.2d 639, 643 (2nd Cir. 1988). Ms. Gibson does not and cannot demonstrate that she has personal knowledge of nor the competency to testify to the facts contained therein. Instead, Ms. Gibson's declaration is based entirely on hearsay, speculation and opinion, and attaches exhibits that are not properly authenticated. Ms. Gibson cannot claim that she has personal knowledge of the facts and statements that related to the documents listed on the Privilege Logs. Blount v. Conn. Gen. Life Inc. Co., No. CV 01-1341-BR, 2002 WL 31974405, *3 (D. Or. 2002). An attorney has no personal knowledge of and is not competent to testify to the authenticity of documents generated before the litigation began or merely produced by his or her client. Ms. Gibson has no personal knowledge of many statements contained within her declaration, and thus the entirety of the declaration should be stricken and given no weight. Bank Melli Iran v. Pahlavi, 58 F.3d 1406, 1412-1413 (C.A. 1995); U.S. v. Dibble, 429 F.2d 598, 602 (C.A. 1970).

b. Contains Inadmissible Hearsay.

Ms. Gibson's declaration contains statements and attached Exhibit "F" is based on and or contains one or more layers of inadmissible hearsay. Federal Rules of Evidence ("FED. R. EVID.") 801, 802, See McEuin v. Crown Equipment Corporation, 328 F.3d 1028, 1034-35 (9th Cir. 2003). For example, paragraph 16 Ms. Gibson attempts to state what the "Court's intention that McKesson and Plaintiffs...should resolve...any disputes regarding the privileged nature of such documents..." Gibson Declaration ¶ 16. This statement is hearsay and is wholly inadmissible.

1 FED. R. EVID. 803. Additionally, Exhibit "F" contains one more more layers of inadmissible
 2 hearsay, is improper argument and opinion, not evidence, lacks foundation of personal
 3 knowledge, and should be excluded from evidence. FED. R. EVID. 803, 701, and 901.
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5 Ms. Gibson has not offered any arguments showing if this statement or Exhibit "F" fall
 6 within an exception or exclusion of the hearsay rule and therefore they are inadmissible under
 7 Fed. R. Evid. 801 and 802. See L.A. News Serv. V. CBS Broad., Inc., 305 F.3d 924 (9th Cir.
 8 2002); Breneman v. Kennecott Corp., 799 F.2d 470, 473 (9th Cir. 1986). Accordingly, ¶ 16 and
 9 Exhibit "F" are inadmissible and should be excluded.

10 c. Impermissibly Vague and Misleading

11 The following statements and exhibits are vague and ambiguous, speculative, misleading,
 12 argumentative, mischaracterize the evidence and/or assume facts not in evidence. Their probative
 13 value, if any, is far outweighed by their prejudicial effect. FRCP 403, 602, See Trevino v. Gates,
 14 99 F.3d 911, 922 (9th Cir. 1996). Therefore, paragraphs 6, 9, 11, 12, 14, 21, are objectionable and
 15 inadmissible under Fed. R. Evid. 403, 602. Moreover, paragraph 21 is irrelevant and does not
 16 tend to make the existence of any fact that is of consequence to the determination of this motion
 17 more or less probable. Fed. R. Evid. 401, 402; See Hobson v. J.R. Watkins Co., 519 F.2d 869,
 18 870 (9th Cir. 1962). Ms. Gibson describes Privilege Log Items 1, 13, 23, 31, 35, 49 and 50 even
 19 though she admits these items are not part of this motion and are "not sought [by Plaintiffs] in this
 20 motion." Gibson Declaration ¶ 21. Paragraph 21 is therefore inadmissible and should be stricken.
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22 d. Exhibit "I" is Irrelevant and Immaterial.

23 The document attached as Exhibit "I" (Honorable Charles F. Eick, United States District
 24 Court, Central District's Order, dated May 15, 2007) is irrelevant under Fed. R. Evid. Rule 401
 25 and therefore not admissible. Only relevant evidence is admissible. U.S. v. Wright, 901 F.2d 68,
 26

1 70 (1990)(“irrelevant evidence of any kind is inadmissible by Rule 402”)(emphasis added). This
 2 evidence does not relate to this motion in any way, and does not tend to make the existence of any
 3 fact that is of consequence to the determination of this action more or less probable. Fed. R.
 4 Evid. 401, 402; See Hobson v. J.R. Watkins Co., 519 F.2d 869, 870 (9th Cir. 1962). This is a
 5 blatant attempt by SSD to mislead and distract the Court. This evidence is totally irrelevant to
 6 SSD’s obligation to comply with the Court’s March 22, 2007 Order. SSD admittedly cannot even
 7 argue with certainty the value of this evidence, as SSD admits that “*some* of these issues *may*
 8 already have been resolved by the Central District Court.” Therefore, it is also inadmissible
 9 under Fed. R. Evid. 402 because the probative value, if any, is far outweighed by its prejudicial
 10 effect. Fed. R. Evid. 403; See Trevino v. Gates, 99 F.3d 911, 922 (9th Cir. 1996).

12 Accordingly, Exhibit “I” is irrelevant, immaterial, and should not be considered by the
 13 Court. Fed. R. Evid. 401, 402; See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.
 14 Ct. 2505, 91 L. Ed. 2d 202 (1986)(document is material only if it creates a fact dispute that could
 15 affect the outcome under applicable governing law). Furthermore, Angeles objects to SSD’s
 16 attempt to “incorporate the arguments made by McKesson in support of its Motion for Protective
 17 Order¹, as it is hearsay, irrelevant, improper argument and opinion, lacks foundation of personal
 18 knowledge, speculative, misleading, argumentative, mischaracterizes the evidence and/or assume
 19 facts not in evidence. Fed. R. Evid. 402, 403, 602, 701, 803, 901.

22 2. Declaration of Maureen Bennett

23 a. Lacks Foundation of Personal Knowledge and Lacks Proper Authentication.

24 Ms. Bennett’s Declaration lacks foundation of personal knowledge and lacks proper
 25 authentication. The requirement that evidence be authenticated is satisfied “by evidence
 26 sufficient to support a finding that the matter in question is what its proponent claims.” Federal
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1 Rule of Evidence 901(a). Ms. Bennett does not establish that she has the necessary personal
 2 knowledge or competency to testify to the facts contained therein, her declaration is speculative at
 3 best. Fed. R. Evid. 602.

4 b. Impermissibly Vague and Misleading

5 Ms. Bennett's Declaration also contains statements that are impermissibly vague and
 6 misleading. For example, paragraph 3 states that "Item 12 is another compilation of documents."
 7 This is vague and ambiguous as to "compilation," and does not assist the Court in any way. It
 8 should be stricken. Also, paragraph 4 is vague and ambiguous. Ms. Bennett states that SSD
 9 Privilege Log items 16 and 17 "*appear* to be a draft and another version of a list that Ms. Leonard
 10 prepared of some or all of the files selected for review as part of the work performed for Univar in
 11 2002." Bennett Declaration, ¶ 4. This statement is vague and ambiguous as to "another version
 12 of a list," and "the work performed for Univar." Ms. Bennett does not describe in any way what
 13 "work performed for Univar" means. Ms. Bennett cannot claim with certainty the identity of
 14 items 16 and 17 and cannot claim with certainty the identity of any documents listed on the
 15 Privilege Logs. This declaration is speculative, and does not assist the Court in any way. Fed. R.
 16 Evid. 401, 402. Accordingly, paragraphs 3-6 should be stricken and not given any weight. Alpha
 17 Energy Savers inc. v. Hansen, 381 F.3d 917, 921 n.1 (9th Cir. 2004)(portions of affidavit as to
 18 which defendants moved to strike were not considered by the Ninth Circuit).

22 3. Declaration of Nicholas Unkovic

23 a. Lacks Foundation of Personal Knowledge and Lacks Proper Authentication.

24 Mr. Unkovic's Declaration lacks foundation of personal knowledge. Mr. Unkovic did not
 25 establish the competency to testify to the facts contained therein. The requirement that
 26 evidence be authenticated is satisfied "by evidence sufficient to support a finding that the matter
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28 ¹ 06-80343 Docket No. 10-17, 38
 Plaintiff Angeles' Evidentiary Objections to SSD's

1 in question is what its proponent claims." Federal Rule of Evidence 901(a) has not been met. As
2 with Ms. Bennet's declaration, Mr. Unkovic does not provide any foundation and does not
3 establish the necessary personal knowledge—other than that the privilege logs were prepared
4 under his "general direction"—and the statements contained in his declaration are speculative at
5 best. Mr. Unkovic expressly admits that he did not have substantial responsibility in preparing
6 these summaries. Unkovic Declaration, ¶ 2. Mr. Unkovic states that other individuals (Francis
7 Toldi and Jennifer Hernandez) had "substantial responsibility for preparation of the
8 Environmental and Non-Environmental Summaries. Id. His declaration should therefore be
9 stricken or disregarded as he lacks personal knowledge and the competency to testify regarding
10 the summaries. Alpha Energy Savers inc. v. Hansen, 381 F.3d 917, 921 n.1 (9th Cir.
11 2004)(portions of affidavit as to which defendants moved to strike were not considered by the
12 Ninth Circuit).

13 b. Improper Argument, Contains Legal Conclusion

14 Mr. Unkovic's Declaration also contains statements that are improper argument and are
15 legal conclusion, not evidence. For example, paragraph 7 states that SSD privilege log items 2,
16 41, 48 were "made in the course of the attorney-client relationship." Unkovic Declaration, ¶ 7.
17 Yet Mr. Unkovic provides no factual support for this statement. This statement is also vague and
18 ambiguous as to what the circumstances of "made in the attorney-client relationship" fall under.
19 Accordingly, paragraphs 7 should be stricken and not given any weight.

1 Conclusion

2 Angeles respectfully requests that the Court exclude from evidence or strike the exhibits
3 and declarations objected to above.

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6 DATED: May 28, 2007

Caufield & James, LLP

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8 Jeffery L. Caufield, Esq.
9 Attorneys for Plaintiff/Counter-Defendant

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28 Plaintiff Angeles' Evidentiary Objections to SSD's